

## Proceedings

1 JHO EVANS: You're wasting time.

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3 MR. MARINO: Your Honor, should we have an  
4 allocution?

5 JHO EVANS: We will, as soon as Mr. Rudes  
6 sits down.

7 First I will ask all counsel, have you all  
8 heard the stipulation?

9 MR. MARINO: Yes, we have.

10 MR. RUBIN: Yes.

11 MR. RUDES: Yes.

12 MR. GREENAWALT: Yes.

13 JHO EVANS: Do you individually agree with  
14 that?

15 MR. GREENAWALT: Yes.

16 MR. RUBIN: Yes.

17 MR. MARINO: Yes.

18 MR. RUDES: Yes.

19 JHO EVANS: Do you agree with that on behalf  
20 of your clients?

21 MR. RUBIN: One other thing. My  
22 understanding is that this stipulation settles this  
23 lawsuit in its entirety.

24 MR. MARINO: Excuse me. Are you referring  
25 to the pending motion?

26 MR. RUBIN: In its entirety.

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1 MR. MARINO: That is our motion.

2 MR. RUBIN: In its entirety and --

3 MR. MARINO: No, not a chance.

4 MR. RUBIN: And is therefore discontinued  
5 with prejudice after we allocute to the stipulation.

6 MR. MARINO: Your Honor, there is not a  
7 chance in hell of Mr. Tunick and I withdrawing the  
8 pending motion. We would be happy, happy to try to  
9 resolve it amicably, but it's not going to be  
10 withdrawn. This is not Larry's motion; it is our  
11 motion.

12 JHO EVANS: All right. Aside from that, do  
13 you agree with the stipulation, aside from that one  
14 question?

15 MR. RUBIN: Right. But my understanding is  
16 that this will discontinue the lawsuit with  
17 prejudice.

18 JHO EVANS: Aside from that.

19 MR. RUBIN: As far as this.

20 JHO EVANS: Aside from the motion, aside  
21 from that question, do you agree with the  
22 stipulation?

23 MR. RUBIN: Yes, if it discontinues the  
24 lawsuit with prejudice.

25 JHO EVANS: Aside from that question, do you  
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agree with that?

MR. RUBIN: Yes.

MR GREENAWALT: My understanding was that it did away with the motion. That was never raised that this was going to be continued.

JHO EVANS: Aside from that, do you agree with the stipulation?

MR. RUBIN: Aside from that, I agree with it.

JHO EVANS: Mr. Greenawalt, do you agree with that, aside from that one question?

MR GREENAWALT: That's a major question, "aside from that," I can't agree to it if that's what's going to continue.

MR. RUBIN: Aside from that.

MR. RUDES: He said aside from that.

MR. GREENAWALT: Again aside from that, the terms are okay, but I was sure --

JHO EVANS: That's what I was asking you.

Aside from that, Mr. Larry Shaw, do you further stipulate, aside from that one question, do you agree with the stipulation?

MR. LARRY SHAW: Yes, your Honor, I do.

JHO EVANS: Have you been advised by your attorneys with respect to that?

MR. LARRY SHAW: By my attorneys I've been

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1  
2 advised, I argued at length and I have agreed.

3 JHO EVANS: Now, I'll ask Edith Marcus, have  
4 you heard the terms of the stipulation?

5 MS. SHAW MARCUS: Yes.

6 JHO EVANS: Have you discussed it with your  
7 lawyers?

8 MS. SHAW MARCUS: Yes.

9 JHO EVANS: And having discussed it and  
10 being advised of the terms, do you agree with it with  
11 the exception of this one question that's just been  
12 raised?

13 MS. SHAW MARCUS: Yes.

14 JHO EVANS: Ms. Stevens, have you heard the  
15 terms of the stipulation?

16 MS. SHAW STEVENS: Yes.

17 JHO EVANS: Have you discussed it with your  
18 lawyers?

19 MS. SHAW STEVENS: Yes.

20 JHO EVANS: Aside from this one question  
21 that's been raised, do you agree with it?

22 MS. SHAW STEVENS: Yes.

23 JHO EVANS: I'm going to ask Mr. Marcus,  
24 you're not formally a party but you're actually a  
25 party. You heard the terms of the stipulation. Have  
26 you discussed it with yours lawyers?



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2 MR. MARCUS: Yes, your Honor.

3 JHO EVANS: Do you agree with them?

4 MR. MARCUS: Yes.

5 JHO EVANS: Except for this one point.

6 Now we have one point of dispute. There's  
7 another question that I will raise in a few minutes.  
8 I think it will be advisable for you talk about, maybe  
9 as you suggested -- it's too late today to continue  
10 with the hearing -- some amicable settlement. We'll  
11 continue again on Monday.

12 The other question in my mind is this.  
13 Before me, to which I have taken evidence, is about  
14 9,800 photographs. There are maybe a hundred thousand  
15 or whatever it was that the receiver has, and I take  
16 it there may be a dispute as to who owns or who should  
17 be attributable to those photographs. I haven't heard  
18 any evidence with respect to them and I'm really not  
19 in a position to make that decision as to those. I  
20 can't say they can be attributed to one or another.

21 How do you want to handle that?

22 MR. MARINO: Your Honor, I would suggest  
23 that since you can't make a determination on those,  
24 that we go back to my original suggestion, which was  
25 if the parties can't agree, that the image itself will  
26 be termed "an image owned by the Shaw Family Archive,"

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and unless the parties can agree on an attribution --

JHO EVANS: The question is, they will be owned by the Shaw Family Archives.

MR. MARINO: The specific authorship.

JHO EVANS: The question is one of attribution.

MR. MARINO: Your Honor, there doesn't have to be a specific attribution to every photograph. It can still be marketed.

MR. GREENAWALT: Your Honor, one of the points about that hundred thousand or 75,000 pictures is that there are many overlaps with the 9,800.

JHO EVANS: That doesn't make any difference. If I decide the 9,800, there may be others that are not.

MR GREENAWALT: These are all taken --

JHO EVANS: Obviously if I decide Picture A is attributed to John Jones, a copy of Picture A is attributable to John Jones. It's pretty clear. There were others that are not.

MR GREENAWALT: I understand, but we have, obviously, as have you, not heard any evidence.

JHO EVANS: That matter was never before me.

MR. GREENAWALT: I know you ruled that,

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1  
2 that's right. There are also, by the way, your Honor,  
3 some pictures that have been turned into the receiver.

4 JHO EVANS: Without arguing the point, the  
5 question is how to handle it.

6 MR GREENAWALT: I'm mentioning the pictures  
7 that have been turned into the receiver. We're just  
8 about to make a motion to get those considered by your  
9 Honor.

10 JHO EVANS: To get what?

11 MR GREENAWALT: Mr. Darius and Larry Shaw  
12 turned over to the receiver in the spring of 2001 --

13 JHO EVANS: He has them, the receiver has  
14 them.

15 MR GREENAWALT: Those need to be decided  
16 upon also, your Honor. There's a much less number of  
17 those, only about, say, 250 of those but they're  
18 important ones. We need to have those decided too.

19 JHO EVANS: The question of the  
20 attribution.

21 MR GREENAWALT: Yes, a lot of those, a lot  
22 of those Larry Shaw has also by a document attributed  
23 them to Sam Shaw, but we need to have those decided as  
24 well.

25 JHO EVANS: Can we continue this on Monday?

26 MR. RUBIN: I can't be here on Monday.

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JHO EVANS: You have able counsel to take  
over for you.

(Proceedings adjourned to June 9, 2002.)

\* \* \* \*

The foregoing is hereby certified to be a  
true and correct transcript of the proceedings held in  
this matter.



DEBRA SALZMAN, RMR

Senior Court Reporter

DEBRA SALZMAN, RMR, Official Court Reporter